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April 3, 2019

Via Email and Electronic Filing

David W. Stark, III, Esquire  
Public Service Commission of South Carolina

RE: *Noller and Halwig v. Daufuskie Island Utility Co., Inc.*  
SC Public Service Commission Docket No.: 2018-364-WS

Dear Mr. Stark:

Pursuant to your request during the recent telephone conference held with counsel in this matter, I write to provide an update on the position of the Respondent, Daufuskie Island Utility Co., Inc ("DIUC"), regarding the parties' impasse in their attempts to resolve this matter.

The Complainants in this matter assert that they were somehow extorted to enter into a contract with DIUC, that the contract should be voided, and that they should be awarded monetary damages in excess of \$100,000. DIUC has asked the Commission to dismiss the Complaint for lack of jurisdiction. DIUC's position is that the Complaint and its demand for relief are beyond the Commission's statutorily prescribed jurisdiction.

On March 20, 2019, the Commission heard oral arguments on this jurisdictional question. At the hearing DIUC and the Complainants agreed to try to negotiate a proposed consent order that would then be presented to the Office of Regulatory Staff for its consideration.

Although DIUC and the Complainants exchanged multiple drafts of a proposed consent order, the parties were not able to reach a final agreement as to the essential terms necessary to resolve the matter. On March 27, 2019, I informed the Commission via email that the parties have reached an impasse:

Mr. Smith and I worked very hard, but DIUC and the Complainants were not successful in negotiating resolution of the above-referenced matter. The parties will not be presenting a consent order for consideration. Therefore, the Utility requests the Commission proceed to a decision on the jurisdictional issue addressed in the recent oral arguments. Please let me know if we can do anything further to assist in that process.

Email from Gressette to Stark, March 27, 2019.

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In response to my email, a telephone conference was held on March 29, 2019. At the conclusion of that call, counsel for the parties were asked to provide an updated statement on their positions. The Complainants have now submitted their statement requesting the Commission schedule a mediation with ORS in this matter. *See* Letter from Smith to Stark, April 3, 2019.

As presented in its briefing and at the last hearing in this matter, DIUC's position is that the Complaint should be dismissed for lack of jurisdiction. *See* DIUC Brief on Jurisdictional Matters, filed March 6, 2019, and DIUC Reply Brief on Jurisdictional Matters filed March 13, 2019. That position remains unchanged.

Despite the strength of its legal position, DIUC has expended a tremendous amount of resources defending this matter and then attempting to come to a negotiated resolution with the Complainants. Those negotiation efforts have not been successful and DIUC has determined it would not be productive or prudent to engage in further attempts to reach a settlement of this matter. DIUC cannot justify committing any additional funds to a negotiation that it knows will not result in a settlement.

Therefore, DIUC respectfully requests the Commission enter its determination on the jurisdictional questions briefed and recently argued. Specifically, the Commission should enter an order dismissing this matter for lack of jurisdiction.

Sincerely,

/s/

Thomas P. Gressette, Jr.

cc: All parties of record